

Pension Benefit Guaranty Corporation

§4211.12

required to prescribe rules governing the application of the statutory allocation methods or modified methods by plans following merger of multiemployer plans. Subpart D sets forth alternative allocative methods to be used by merged plans. In addition, such plans may adopt any of the allocation methods or modifications described under subparts B and C in accordance with the rules under subparts B and C.

(b) *Scope.* This part applies to all multiemployer plans covered by title IV of ERISA.

§ 4211.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: Code, employer, IRS, multiemployer plan, nonforfeitable benefit, PBGC, plan, and plan year.

In addition, for purposes of this part:

Initial plan year means a merged plan's first complete plan year that begins after the establishment of the merged plan.

Initial plan year unfunded vested benefits means the unfunded vested benefits as of the close of the initial plan year, less the value as of the end of the initial plan year of all outstanding claims for withdrawal liability that can reasonably be expected to be collected from employers that had withdrawn as of the end of the initial plan year.

Merged plan means a plan that is the result of the merger of two or more multiemployer plans.

Merger means the combining of two or more multiemployer plans into one multiemployer plan.

Prior plan means the plan in which an employer participated immediately before that plan became a part of the merged plan.

Unfunded vested benefits means an amount by which the value of nonforfeitable benefits under the plan exceeds the value of the assets of the plan.

Withdrawing employer means the employer for whom withdrawal liability is being calculated under section 4201 of ERISA.

Withdrawn employer means an employer who, prior to the withdrawing employer, has discontinued contributions to the plan or covered operations under the plan and whose obligation to

contribute has not been assumed by a successor employer within the meaning of section 4204 of ERISA. A temporary suspension of contributions, including a suspension described in section 4218(2) of ERISA, is not considered a discontinuance of contributions.

§ 4211.3 Special rules for construction industry and IRC section 404(c) plans.

(a) *Construction plans.* Except as provided in §§4211.11(b) and 4211.21(b), a plan that primarily covers employees in the building and construction industry shall use the presumptive method for allocating unfunded vested benefits.

(b) *Section 404(c) plans.* A plan described in section 404(c) of the Code or a continuation of such a plan shall allocate unfunded vested benefits under the rolling-5 method unless the plan, by amendment, adopts an alternative method or modification.

Subpart B—Changes Not Subject to PBGC Approval

§ 4211.11 Changes not subject to PBGC approval.

(a) *General rule.* A plan, other than a plan that primarily covers employees in the building and construction industry, may adopt, by amendment, any of the statutory allocation methods and any of the modifications set forth in §§4211.12 and 4211.13, without the approval of the PBGC.

(b) *Building and construction industry plans.* A plan that primarily covers employees in the building and construction industry may adopt, by amendment, any of the modifications to the presumptive rule set forth in §4211.12 without the approval of the PBGC.

§ 4211.12 Modifications to the presumptive, modified presumptive and rolling-5 methods.

(a) *“Contributions made” and “total amount contributed”.* Each of the allocation fractions used in the presumptive, modified presumptive and rolling-5 methods is based on contributions that certain employers have made to the plan for a five-year period. For purposes of these methods, and except as provided in paragraph (b) of this section, “the sum of all contributions